

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

SEA SHEPHERD CONSERVATION SOCIETY)

P.O. Box 2616)

Friday Harbor, WA 98250)

Plaintiff,)

v.)

INTERNAL REVENUE SERVICE,)

1111 Constitution Avenue N.W.)

Washington, DC 20224)

Defendant.)

Civil Action No. _____

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), as amended, for injunctive and other appropriate relief and seeking the disclosure and release of agency records improperly withheld from plaintiff, Sea Shepherd Conservation Society (“Sea Shepherd”), by defendant, the Internal Revenue Service (“IRS”).

Jurisdiction and Venue

2. This Court has subject matter and personal jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331, because this is an action to enforce the FOIA. Venue lies in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

Parties

3. Plaintiff, Sea Shepherd, the requester of the agency records that have been improperly withheld, is a corporation organized and existing under the laws of Washington.

4. Defendant, the IRS, is a component entity of the Department of the Treasury, which is a Department of the Executive Branch of the United States Government. The IRS has

its headquarters in Washington, DC, within this judicial district. The IRS is an “agency” within the meaning of 5 U.S.C. § 552(f). The IRS has possession and control of the records requested by the plaintiff.

Plaintiff’s FOIA Request

5. On May 13, 2013, plaintiff filed a request for information pursuant to 5 U.S.C. § 552 et seq. A true and correct copy of plaintiff’s FOIA request is attached to this Complaint as Exhibit A. Plaintiff’s FOIA request made clear that plaintiff would not consent to any extensions of time to comply with the request.

6. On June 17, 2013, Denise Higley, a Tax Law Specialist at the IRS, sent a letter to plaintiff’s counsel stating:

I am unable to respond to your request by June 18, 2013, which is the 20 business-day period allowed by law. I apologize for any inconvenience this delay may cause.

The letter goes on to state:

Unfortunately, we will still be unable to locate and consider release of the requested records by July 2, 2013. We have extended the statutory response date to August 2, 2013, when we believe we can provide a final response. ...

You may file suit if you do not agree to an extension beyond the statutory period.

The letter is attached hereto as Exhibit B.

7. To date, defendant has not provided the records requested by plaintiff in the FOIA request, notwithstanding FOIA’s requirement of an agency response within twenty (20) working days.

8. Pursuant to 5 U.S.C. § 552(a)(6)(C), plaintiff is deemed to have exhausted the applicable administrative remedies with respect to its FOIA request to defendant.

9. Defendant has wrongfully withheld the requested records from plaintiff.

Prayer for Relief

WHEREFORE, plaintiff prays that this Court:

- (1) Order defendant to disclose the requested records in their entireties and make copies available to plaintiff;
- (2) Provide for expeditious proceedings in this action;
- (3) Award plaintiff its costs and reasonable attorneys fees incurred in this action; and
- (4) Grant such other relief as the Court may deem just and proper.

Respectfully submitted,

Dated: September 19, 2013

/s/ Christopher S. Rizek
Christopher S. Rizek
D.C. Bar No. 370796
CAPLIN & DRYSDALE, CHARTERED
One Thomas Circle, NW
Washington, DC 20005
Tel.: (202) 862-8852

Attorney for Plaintiff



Caplin & Drysdale, Chartered
One Thomas Circle, NW, Suite 1100
Washington, DC 20005
202-862-5000 202-429-3301 Fax
www.caplindrysdale.com

202-862-7818 Direct
dvarley@capdale.com

May 13, 2013

VIA FIRST-CLASS MAIL

Disclosure Officer
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, D.C. 20224

Internal Revenue Service
Disclosure Scanning Operation - Stop 93A
P.O. Box 621506
Atlanta, GA 30362-3006

IRS FOIA Request
HQ FOIA - Stop 211
2385 Chamblee Tucker Road
Chamblee, GA 30341

Re: Sea Shepherd Conservation Society (EIN: 93-0792021)

Dear Sir or Madam:

This is a request pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA") and the Privacy Act, 5 U.S.C. § 552a.

Pursuant to these statutes, the taxpayer identified above, the Sea Shepherd Conservation Society ("Sea Shepherd"), hereby requests any and all documents, from January 1, 2006, through the date of this request, related to Sea Shepherd. This includes, but is not limited to, any and all documents related to the examination of Sea Shepherd commenced by the Internal Revenue Service on or about January 4, 2013, and any and all documents relating to any complaint lodged with the Internal Revenue Service expressing concerns regarding Sea Shepherd's activities or qualification for tax-exempt status after January 1, 2006. The examining agent is Mr. Peter Huang; his address is Group 7983, 9350 E. Flair Drive, El Monte, CA 91731. Furthermore, we believe that additional documents related to the taxpayer may be located in the National and Area Chief Counsel Offices of the Tax-Exempt and Government Entities function of the IRS, as well as the Director of Exempt Organizations Exams office in Dallas, Texas, and EO Rulings and Agreements in the TE-GE National office.

This request includes, but is not limited to, any and all documents related to any request from any person that the Internal Revenue Service examine Sea Shepherd and any and all documents that relate to



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the examination of Sea Shepherd. Please note that the term "document" in this request is intended to include the full panoply of documents that meet that definition under the FOIA.

A Power of Attorney authorizing me to receive this information on behalf of the above-named taxpayer is enclosed.

Please mail copies of the requested documents to me at the address shown above. The IRS is authorized to charge Caplin & Drysdale for the costs, up to \$1,000.00, of searching for the documents described above, making any necessary deletions or redactions from them, and making the requested copies. If such costs are estimated to exceed \$1,000.00, please contact me at (202) 862-7818 with the estimate and for further authorization.

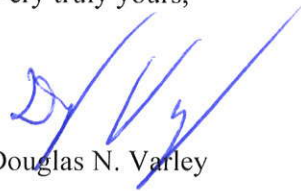
Should it be asserted that any portion of the requested documents is exempt from disclosure under the FOIA or Privacy Act, please provide us with a copy of the portion(s) considered not exempt. Further, with respect to each document (or any portion thereof) that you believe is exempt from disclosure, please provide us with the following information:

1. The title of the document;
2. The date (if any) of the document;
3. The author(s) of the document;
4. The recipient(s) of the document, including both the addressee and any individuals to whom copies were directed;
5. A factual description of the document;
6. A statement of the specific exemption(s) claimed under the statutory provisions;
7. The justification for claiming the exemption(s).

Any correspondence concerning this request should be sent to me at the address shown above. Please note in advance, however, that the taxpayer does not intend to agree to any extensions of the statutory deadlines for responding to this request that are set forth in the FOIA and accompanying regulations.

Thank you very much for your attention to this matter.

Very truly yours,



Douglas N. Varley

cc: Sea Shepherd Conservation Society

Form **2848**
(Rev. March 2012)
Department of the Treasury
Internal Revenue Service

Power of Attorney and Declaration of Representative

▶ Type or print. ▶ See the separate Instructions.

OMB No. 1545-0150

For IRS Use Only

Received by:

Name _____

Telephone _____

Function _____

Date ____/____/____

Part I Power of Attorney

Caution: A separate Form 2848 should be completed for each taxpayer. Form 2848 will not be honored for any purpose other than representation before the IRS.

1 Taxpayer information. Taxpayer must sign and date this form on page 2, line 7.

Taxpayer name and address

Sea Shepherd Conservation Society
PO Box 2616
Friday Harbor, WA 98250

Taxpayer identification number(s)

93-0792021

Daytime telephone number

(360) 370-5650

Plan number (if applicable)

hereby appoints the following representative(s) as attorney(s)-in-fact:

2 Representative(s) must sign and date this form on page 2, Part II.

Name and address

Douglas N. Varley, Caplin & Drysdale
1 Thomas Cir NW, Suite 1100
Washington, DC 20005

Check if to be sent notices and communications ☒CAF No. **0308-65950R**PTIN **P01483442**Telephone No. **202-862-7818**Fax No. **202-429-3301**Check if new: Address ☐ Telephone No. ☐ Fax No. ☐

Name and address

Elizabeth A. Grossman, Caplin & Drysdale
1 Thomas Cir NW, Suite 1100
Washington, DC 20005

Check if to be sent notices and communications ☒CAF No. **0307-28666R**PTIN **P01460055**Telephone No. **202-862-7860**Fax No. **202-429-3301**Check if new: Address ☐ Telephone No. ☐ Fax No. ☐

Name and address

CAF No. _____

PTIN _____

Telephone No. _____

Fax No. _____

Check if new: Address ☐ Telephone No. ☐ Fax No. ☐

to represent the taxpayer before the Internal Revenue Service for the following matters:

3 Matters

Description of Matter (Income, Employment, Payroll, Excise, Estate, Gift, Whistleblower, Practitioner Discipline, PLR, FOIA, Civil Penalty, etc.) (see instructions for line 3)	Tax Form Number (1040, 941, 720, etc.) (if applicable)	Year(s) or Period(s) (if applicable) (see instructions for line 3)
FOIA	n/a	2006-2013

4 Specific use not recorded on Centralized Authorization File (CAF). If the power of attorney is for a specific use not recorded on CAF, check this box. See the instructions for Line 4. **Specific Uses Not Recorded on CAF** ☐

5 Acts authorized. Unless otherwise provided below, the representatives generally are authorized to receive and inspect confidential tax information and to perform any and all acts that I can perform with respect to the tax matters described on line 3, for example, the authority to sign any agreements, consents, or other documents. The representative(s), however is (are) not authorized to receive or negotiate any amounts paid to the client in connection with this representation (including refunds by either electronic means or paper checks). Additionally, unless the appropriate box(es) below are checked, the representative(s) is (are) not authorized to execute a request for disclosure of tax returns or return information to a third party, substitute another representative or add representatives, or sign certain tax returns.

☐ Disclosure to third parties; ☐ Substitute or add representative(s); ☐ Signing a return; _____

☐ Other acts authorized: _____

(see instructions for more information)

Exceptions. An unenrolled return preparer cannot sign any document for a taxpayer and may only represent taxpayers in limited situations. An enrolled actuary may only represent taxpayers to the extent provided in section 10.3(d) of Treasury Department Circular No. 230 (Circular 230). An enrolled retirement plan agent may only represent taxpayers to the extent provided in section 10.3(e) of Circular 230. A registered tax return preparer may only represent taxpayers to the extent provided in section 10.3(f) of Circular 230. See the line 5 instructions for restrictions on tax matters partners. In most cases, the student practitioner's (level k) authority is limited (for example, they may only practice under the supervision of another practitioner).

List any specific deletions to the acts otherwise authorized in this power of attorney: _____

6 Retention/revocation of prior power(s) of attorney. The filing of this power of attorney automatically revokes all earlier power(s) of attorney on file with the Internal Revenue Service for the same matters and years or periods covered by this document. If you do not want to revoke a prior power of attorney, check here ☐ **YOU MUST ATTACH A COPY OF ANY POWER OF ATTORNEY YOU WANT TO REMAIN IN EFFECT.**

7 Signature of taxpayer. If a tax matter concerns a year in which a joint return was filed, the husband and wife must each file a separate power of attorney even if the same representative(s) is (are) being appointed. If signed by a corporate officer, partner, guardian, tax matters partner, executor, receiver, administrator, or trustee on behalf of the taxpayer, I certify that I have the authority to execute this form on behalf of the taxpayer.

► **IF NOT SIGNED AND DATED, THIS POWER OF ATTORNEY WILL BE RETURNED TO THE TAXPAYER.**

Marnie Gaede 2-15-2013 President
Signature Date Title (if applicable)

Marnie Gaede Sea Shepherd Conservation Society
Print Name PIN Number Print name of taxpayer from line 1 if other than individual

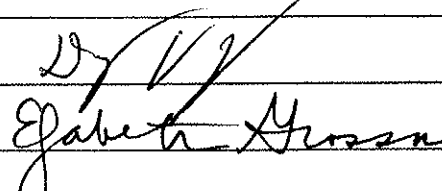
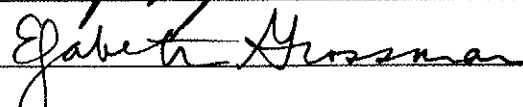
Part II Declaration of Representative

Under penalties of perjury, I declare that:

- I am not currently under suspension or disbarment from practice before the Internal Revenue Service;
- I am aware of regulations contained in Circular 230 (31 CFR, Part 10), as amended, concerning the practice before the Internal Revenue Service;
- I am authorized to represent the taxpayer identified in Part I for the matter(s) specified there; and
- I am one of the following:
 - a Attorney—a member in good standing of the bar of the highest court of the jurisdiction shown below.
 - b Certified Public Accountant—duly qualified to practice as a certified public accountant in the jurisdiction shown below.
 - c Enrolled Agent—enrolled as an agent under the requirements of Circular 230.
 - d Officer—a bona fide officer of the taxpayer's organization.
 - e Full-Time Employee—a full-time employee of the taxpayer.
 - f Family Member—a member of the taxpayer's immediate family (for example, spouse, parent, child, grandparent, grandchild, step-parent, step-child, brother, or sister).
 - g Enrolled Actuary—enrolled as an actuary by the Joint Board for the Enrollment of Actuaries under 29 U.S.C. 1242 (the authority to practice before the Internal Revenue Service is limited by section 10.3(d) of Circular 230).
 - h Unenrolled Return Preparer—Your authority to practice before the Internal Revenue Service is limited. You must have been eligible to sign the return under examination and have signed the return. See Notice 2011-6 and Special rules for registered tax return preparers and unenrolled return preparers in the instructions.
 - i Registered Tax Return Preparer—registered as a tax return preparer under the requirements of section 10.4 of Circular 230. Your authority to practice before the Internal Revenue Service is limited. You must have been eligible to sign the return under examination and have signed the return. See Notice 2011-6 and Special rules for registered tax return preparers and unenrolled return preparers in the instructions.
 - k Student Attorney or CPA—receives permission to practice before the IRS by virtue of his/her status as a law, business, or accounting student working in LITC or STCP under section 10.7(d) of Circular 230. See instructions for Part II for additional information and requirements.
 - r Enrolled Retirement Plan Agent—enrolled as a retirement plan agent under the requirements of Circular 230 (the authority to practice before the Internal Revenue Service is limited by section 10.3(e)).

► **IF THIS DECLARATION OF REPRESENTATIVE IS NOT SIGNED AND DATED, THE POWER OF ATTORNEY WILL BE RETURNED. REPRESENTATIVES MUST SIGN IN THE ORDER LISTED IN LINE 2 ABOVE.** See the instructions for Part II.

Note: For designations d-f, enter your title, position, or relationship to the taxpayer in the "Licensing jurisdiction" column. See the instructions for Part II for more information.

Designation—Insert above letter (a–r)	Licensing jurisdiction (state) or other licensing authority (if applicable)	Bar, license, certification registration, or enrollment number (if applicable). See instructions for Part II for more information.	Signature	Date
a	DC	453672		2/15/13
a	DC	990325		2/15/13

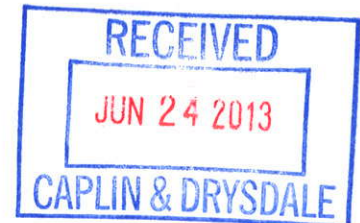


PRIVACY, GOVERNMENTAL
LIAISON AND DISCLOSURE

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

June 17, 2013

Douglas Varley
Caplain & Drysdale
One Thomas Circle NW
Suite 1100
Washington, DC 20005



Dear Mr. Varley:

I am responding to your Freedom of Information Act (FOIA) request dated May 13, 2013 that we received on May 20, 2013.

I am unable to send the information you requested by June 18, 2013, which is the 20 business-day period allowed by law. I apologize for any inconvenience this delay may cause.

STATUTORY EXTENSION OF TIME FOR RESPONSE

The FOIA allows an additional ten-day statutory extension in certain circumstances. To complete your request I need additional time to search for, collect, and review responsive records from other locations. We have extended the statutory response date to July 2, 2013, after which you can file suit. An administrative appeal is limited to a denial of records, so it does not apply in this situation.

REQUEST FOR ADDITIONAL EXTENSION OF TIME

Unfortunately, we will still be unable to locate and consider release of the requested records by July 2, 2013. We have extended the response date to August 2, 2013, when we believe we can provide a final response.

You do not need to reply to this letter if you agree to this extension. You may wish to consider limiting the scope of your request so that we can process it more quickly. If you want to limit your request, please contact the individual named below. If we subsequently deny your request, you still have the right to file an administrative appeal.

You may file suit if you do not agree to an extension beyond the statutory period. Your suit may be filed in the U.S. District Court:

- Where you reside or have your principal place of business



- Where the records are located, or
- In the District of Columbia

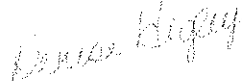
You may file suit after July 2, 2013. Your complaint will be treated according to the Federal Rules of Civil Procedure applicable to actions against an agency of the United States. These procedures require that the IRS be notified of the pending suit through service of process, which should be directed to:

Commissioner of Internal Revenue
Attention: CC:PA: Br 6/7
1111 Constitution Avenue, NW
Washington, D.C. 20224

The FOIA provides access to existing records. Extending the time period for responding to your request will not delay or postpone any administrative, examination, investigation or collection action.

If you have any questions please call me at (801) 620-7638 or write to: Internal Revenue Service, HQ Disclosure, 2980 Brandywine Road, Stop 211, Chamblee, GA 30341. Please refer to case number F13140-0026.

Sincerely,



Denise Higley
Tax Law Specialist
Badge No. 1000142331
Headquarters (HQ) Disclosure FOIA Group